

DEPOSITION OF CLARENCE MOSES

MARCH 17, 2006

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

THE ESTATE OF ERIK A. POWELL, ) Civil No.  
THROUGH PERSONAL REPRESENTATIVE ) CV04-00428 LEK  
MARY K. POWELL; THE ESTATE OF )  
JAMES D. LAUGHLIN, THROUGH PERSONAL )  
REPRESENTATIVE RAGINAE C. LAUGHLIN; )  
MARY K. POWELL, INDIVIDUALLY; )  
RAGINAE C. LAUGHLIN, INDIVIDUALLY; )  
CHLOE LAUGHLIN, A MINOR, THROUGH )  
HER NEXT FRIEND, RAGINAE C. )  
LAUGHLIN, )

Plaintiffs, )

vs. )

CITY AND COUNTY OF HONOLULU, )

Defendant, )

and )

CITY AND COUNTY OF HONOLULU, )

Third-Party Plaintiff, )

vs. )

UNIVERSITY OF HAWAII, a body )  
Corporate; JOHN DOES 1-10, JANE )  
DOES 1-10; DOE CORPORATIONS and )  
DOE ENTITIES, )

Third-Party Defendants. )

DEPOSITION OF CLARENCE MOSES

Taken on behalf of Plaintiffs at the Law Offices of Ian L. Mattoch, 737 Bishop Street, Suite 1835, Honolulu Hawaii, commencing at 1:00 p.m. on March 17, 2006, pursuant to Notice.

Before: WILLIAM T. BARTON, RPR, CSR NO. 391

**EXHIBIT** "14"

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1 A. About three years ago.  
 2 Q. Was that after this 2002 period?  
 3 A. That's way after. I think it was 2005, I  
 4 changed.  
 5 Q. Okay. You said you would write down the  
 6 conditions every day on your log?  
 7 A. Yeah.  
 8 Q. Do you remember the conditions on the day of the  
 9 accident we're here for, July 19, 2002?  
 10 A. Offhand, no.  
 11 (Whereupon, a Supervisor's Report Major Incident  
 12 Check Off Sheet was marked as Exhibit 1 for  
 13 Identification.)  
 14 BY MS. WATERS:  
 15 Q. I'm going to mark this as Exhibit 1.  
 16 Did you fill this form out, or any portion of it?  
 17 A. No.  
 18 Q. Do you know where that came from?  
 19 A. Usually what it states is it's a supervisory  
 20 report log. It's a supervisory thing.  
 21 Q. Can you read the signature at the bottom?  
 22 A. No.  
 23 Q. The handwriting on the top, that's not your  
 24 handwriting?  
 25 A. No.

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1 (Whereupon, an Incident Report was marked as  
 2 Exhibit 2 for Identification.)  
 3 BY MS. WATERS:  
 4 Q. Does that incident report look familiar?  
 5 A. Yeah.  
 6 Q. Did you fill that out?  
 7 A. No.  
 8 Q. Do you know who did?  
 9 A. No.  
 10 Q. I'm just going to go through that incident report  
 11 with you. On the top line, it's checked off "Resusci" of  
 12 the first page.  
 13 What does that mean?  
 14 A. Resuscitated.  
 15 Q. And it has the date, July 19, 2002, Friday,  
 16 11:39.  
 17 From your recollection, was the incident about  
 18 11:39 in the morning?  
 19 A. About.  
 20 Q. And what does the "Station 3A" refer to?  
 21 A. Station 3 Alpha.  
 22 Q. And that's the tower?  
 23 A. That's the tower on the Ewa side of the beach.  
 24 Q. Why is that tower noted?  
 25 A. Well, there's two towers. When you assign people

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1 two towers, you can't just say, Go to Beach 3, when the  
 2 supervisor makes who goes where.  
 3 So everybody -- they put it -- just like in  
 4 Waikiki. Every tower in Waikiki is numbered 1 Alpha. You  
 5 go down the names, 2 Alpha. So everybody knows where they  
 6 work at.  
 7 Q. Is it 3 Alpha because that's where the person was  
 8 sighted, as opposed to 3 Bravo?  
 9 A. "3 Alpha" means that was the side that he was  
 10 resuscitated on. We, the tower, on that side, responded to  
 11 this incident.  
 12 Q. Okay. If you go down under "Activity," and it's  
 13 checked off "Snorkeling" on the left-hand side?  
 14 A. Yes.  
 15 Q. Do you know why that would be checked off?  
 16 A. I seen the guy with the mask and snorkel. That's  
 17 why.  
 18 Q. Was that the first person or the second person?  
 19 A. First person.  
 20 Q. And down below, "Location, Witches Brew and  
 21 ledge," what does that refer to?  
 22 A. It refers to the Witches Brew point on the inside  
 23 part where you can see, because the back side, you can't  
 24 see at all.  
 25 Q. Is that the -- refers to where the person was

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1 sighted?  
 2 A. Yes. And rescued.  
 3 Q. "Signs posted" is checked, "Yes."  
 4 What does that refer to?  
 5 A. Meaning we had our usual "Strong Current" signs.  
 6 According to this, basically, that's about it.  
 7 Q. "Direction from tower," next to that, it's  
 8 checked off, "Front" and "Right."  
 9 What does that mean?  
 10 A. Meaning it's from our tower, looking straight  
 11 out, there's approximately that far out, and to the right.  
 12 Q. And "Distance from tower, 1,200." "Distance  
 13 from shore, 1,200 yards."  
 14 A. Yes. From the tower, if you have to run or  
 15 paddle, it could come out about that far, approximately.  
 16 Q. Do you agree with that estimated distance?  
 17 A. Yeah, because the distance, we didn't paddle. It  
 18 was faster to run. So we ran there.  
 19 Q. Did you personally run out?  
 20 A. Yeah, after the first guy ran out. I was the  
 21 guy -- the second guy always carried the equipment, 02,  
 22 whatever we need.  
 23 Q. Do you remember how long it took to run from the  
 24 tower to where you found the body, or where you pulled the  
 25 body up?

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1 A. I was too busy running. Didn't keep track of  
2 time.  
3 Q. On the far right, it says, "Shallow water, medium  
4 water, and deep water." Those were all checked off.  
5 Do you know what that refers to?  
6 A. No. Because we found him in pretty deep water.  
7 Well, actually on the side of the ledge was -- he started  
8 from the beginning, he was kind of shallow in the  
9 beginning, because he was right on the side of the ledge.  
10 Q. That area where it's marked off, when you filled  
11 this out, I take it you filled these out many times?  
12 A. For this one, I don't think I filled this out.  
13 Q. This type of form, you filled out over the years?  
14 A. Yes.  
15 Q. What do you believe that, the "Shallow water,  
16 medium water, deep water" to mean?  
17 A. He was close to the ledge. In high or low tide,  
18 ledges come down at a slight angle. It doesn't drop off.  
19 It goes like this, gradually. As you get further away from  
20 the ledge, five, six feet, then it drops.  
21 Q. Is it safe to say that this "shallow, medium,  
22 deep water" refers to where the person was located and what  
23 the water depth was?  
24 MR. MAYESHIRO: Lack of foundation.  
25 A. All I can say, we did find him on the deep side,

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1 but not far from it.  
2 Q. Putting aside this incident, just this box. I'm  
3 trying to understand what it means when you check it off.  
4 A. Well, let me put it this way, then. When I seen  
5 him swimming around the point, he looked fine to me. Until  
6 you start to climb up the side. He tried climbing up and  
7 he fell down. Then I said -- I thought something was  
8 wrong, so I sent a guy out.  
9 As he went on the side -- if he was hanging on  
10 the side, it was shallow on the side on the reef. If he  
11 stood up, he could stand up. As he fell back, he drifted  
12 down into the deep side.  
13 Q. All right. But we'll get to that, the actual  
14 incident itself. But my question is with regard to when  
15 the lifeguard or whoever fills out these forms checks these  
16 off, does this refer to the place where the person was  
17 found? As far as how deep the water was?  
18 A. I would say, yeah.  
19 Q. So the fact that all three, Shallow, Medium, Deep  
20 are checked off, you're saying that your understanding is  
21 that at certain areas, it was all three, shallow, medium --  
22 A. Yeah, as it goes like this.  
23 Q. You're indicating like a slope?  
24 A. Yeah.  
25 Q. The weather condition on this form indicates

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1 "Partially, part cloudy"?  
2 A. Yes.  
3 Q. Would you agree with that?  
4 A. I can't remember the day. But if it's checked  
5 off, pretty much, that's what I would say.  
6 Q. And how about "variable winds."  
7 Would you agree with that? It looks like "3 to  
8 15" or "5 to 15."  
9 A. Hanauma Bay, you never know. It's always, the  
10 wind is always swirling, so most of the time, you -- it can  
11 get variable.  
12 Q. And do you remember what the ocean conditions  
13 were like that day?  
14 A. I would say it was like a regular day. Not super  
15 choppy, but it was a little choppy.  
16 Q. Did you perform CPR on the first body that was  
17 found?  
18 A. I don't know, that one. I'm not too sure.  
19 Q. Why don't we just go to the day of the accident.  
20 You were working at 3 Alpha, Tower 3 Alpha,  
21 right?  
22 A. Right.  
23 Q. And tell me what you first saw with regard to  
24 these two individuals, like how it all first began.  
25 A. Well, like I said, I was sitting in the tower,

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1 looking out. And off the corner of my eye, I seen somebody  
2 swimming around Witches Brew Point.  
3 He swam a little bit past the point. Well, to  
4 me, he was swimming fine. He knew how to swim.  
5 And then I seen him try to climb out to the side  
6 of the ledge, grab on and climb out. But when he grabbed  
7 on, he was hanging and he just dropped. He just let go,  
8 because I guess he was too weak or whatever.  
9 But as soon as I seen them, it struck me as kind  
10 of wrong. That day it was Daniel Neves was my partner.  
11 He was at the bottom. I told him, Go. Usually,  
12 I tell the guys about scenarios, in case of drownings, just  
13 go. Get your stuff. When I say go, just go.  
14 He took off. Got all his gear, and he took off,  
15 running. When he was running, I watched the guy; he tried  
16 to climb up again. Wait a little while, he was hanging a  
17 little bit, and he dropped again.  
18 At this time, when I looked across, Neves had  
19 reached the end of the beach.  
20 Q. Okay.  
21 A. I went back to the guy. I was watching and  
22 waiting for him to swim. And I didn't see no swimming.  
23 But before all of that happened, I did call the supervisor  
24 that there was a possible rescue enroute. So he came  
25 across.



